2001

State of Utah v. Jeffrey Ray Tompkins : Brief of Appellee

Utah Court of Appeals

Mark Shurtleff; attorney general; attorney for appellee.
Kent R. Hart, David P.S. Mack; Salt Lake Legal Defender Assoc.; attorneys for appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 20010887-CA
JEFFREY RAY TOMPKINS,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM SENTENCES FOR TWO CONVICTIONS OF OPERATING A CLANDESTINE LAB, FIRST AND SECOND DEGREE FELONIES, IN VIOLATION OF UTAH CODE ANN. §§ 58-37D-4(1) AND -5(1) (1998), IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE PAUL G. MAUGHAN, PRESIDING

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No Oral Argument or Published Opinion Requested

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from concurrent sentences for two convictions of operating a clandestine drug laboratory, first and second degree felonies, in violation of Utah Code Ann. §§ 58-37d-4(1) and -5(1) (1998) (attached in **Addendum A**).[1]

This Court has jurisdiction to hear the appeal under Utah Code Ann. §§ 78-2a-3(2)(e) & (j) (Supp. 2001).

[1]Section 58-37d-5(1) was amended subsequent to commission of the offense in this case. However, the amendment is not relevant to these proceedings. For the reader's convenience, the State cites to the 1998 version of both statutes.

STATEMENT OF ISSUE PRESENTED ON APPEAL AND STANDARD OF APPELLATE REVIEW

The sole question presented is whether the trial court abused its discretion in sentencing defendant to concurrent statutory prison terms for operating two clandestine methamphetamine labs.

"This [C]ourt 'does not disturb a sentence unless it exceeds that prescribed by law or unless the trial court has abused its discretion.'" State v. Baker, 963 P.2d 801, 810 (Utah App.) (quoting State v. Russell, 791 P.2d 188, 192 (Utah 1990)) (additional citation omitted), cert. denied, 982 P.2d 88 (Utah 1998). A sentence will be overturned "only when it is inherently unfair or clearly excessive." State v. Woodland, 945 P.2d 665, 671 (Utah 1997); State v. McCovey, 803 P.2d 1234, 1235 (Utah 1990) (finding abuse of discretion when court fails to consider all legally relevant factors or when sentence imposed is clearly excessive); State v. Gerrard, 584 P.2d 885, 887 (Utah 1978) (concluding that "appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court"); see also State v. Pierson, 2000 UT App 274, ¶ 10, 12 P.3d 103, cert. denied, 20 P.3d 403 (Utah 2001); State v. Houk, 906 P.2d 907, 909 (Utah App. 1995).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No constitutional provisions, statutes, or rules are particularly relevant to resolution of the issue presented on appeal.

STATEMENT OF THE CASE

Defendant was charged with drug-related offenses in two separate informations. The first involved offenses occurring on September 23, 1999, and charged him with two counts of operating a clandestine lab, first and second degree felonies (RSC. 2-4).[2] The second involved violations occurring on February 1, 2001, at a separate address, and charged him with possession of clandestine laboratory precursors and/or equipment and unlawful distribution of a controlled substance, both first degree felonies, and possession of drug paraphernalia, a class B misdemeanor (RCA. 2-5). The cases were processed together. The parties reached a plea bargain under which defendant pled guilty to two counts of operating a clandestine drug laboratory, first and second degree felonies (RSC. 28-29, 44, 46; RCA. 27-28, 34, 36, 38). The State obtained dismissal of the remaining charges in both informations and recommended that the sentences be served concurrently (RSC. 30; R. 56: 3, 9).

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[2]The appellate record contains two pleadings files, one from each of the cases from which this appeal stems. For the reader's convenience, the State will duplicate defendant's citation form, citing to the folder numbered 20010887-SC as RSC. #, and folder number 20010887-CA as RCA. #.

Folder number 20010887-CA contains a signed, written order (RCA. 40-41). Although no signed order appears in folder number 20010887-SC, a copy of a signed order for that file appears in folder number 20010887-CA (RSC. 36-37).

The index appearing in folder number 20010887-CA is a copy of the index belonging to the other folder. No index of folder number 20010887-CA appears in that folder.

The court ordered a presentence investigation report ["PSI"] (R. 56: 9-10). At the sentencing hearing, defense counsel reported no inaccuracies in the report (R. 57: 3). The report contained a recommendation of a jail term, probation, and drug treatment (PSI. 76). The prosecutor dismissed the recommendation as the result of a policy decision relating to budgetary constraints, arguing that it was not specifically related to this defendant (R. 57: 5-6). Instead, the prosecutor recommended concurrent prison terms for the two convictions, citing the amount of methamphetamine defendant had helped to produce and the length of his involvement (R. 57: 6-8)

The sentencing judge noted his surprise at the recommendation in the PSI, stating that as he read the report, his inclination was to impose prison time (R. 57: 10). The judge made it clear his concern was about society as well as defendant (R. 57: 10-11). Based on the evidence before him, the judge sentenced defendant to a statutory prison term of five-years-to-life for the first degree felony (RSC. 46-47), and one-to-fifteen years for the second degree felony, to run concurrently (RCA. 36-37, 40-41).

Defendant appealed the sentence in each case (RSC. 48-49, 60; RCA. 43-44, 55-55A). By order dated December 19, 2001, the Utah Supreme Court poured over to this Court the appeal involving the first degree felony. This Court consolidated both appeals by order dated January 16, 2002.

STATEMENT OF FACTS[3]

Case No. 001920749:

On September 23, 1999, police served a search warrant on the home of co-defendant Martha Rojo in Salt Lake County, looking for evidence of a clandestine methamphetamine laboratory (RSC. 3; PSI 64). They found defendant in the basement (id.). He said he lived there (RSC. 3-4; PSI 64). A search of the home uncovered "a large clandestine laboratory" together with containers of suspected methamphetamine and other items of paraphernalia located in a separate area of the home (RSC. 3; PSI 64). Defendant admitted he was paid "substantial sums of money" to permit another person to manufacture methamphetamine in the home (RSC. 4; R. 57: 6). For six months, defendant received $500.00 plus an eight ball per "throw" (R. 57: 6).[4]

Case No. 011903328:

On February 1, 2001, police served a search warrant on a home in West Valley City, looking for a fugitive and evidence of a clandestine laboratory (RCA. 4; PSI 65). They found defendant in the basement with ph strips in his hands (id.). A search of the

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[3]The facts are taken from the informations and probable cause statements in both cases as well as from the official version of each offense as reported in the presentence investigation report.

[4]An "eight ball" is an eighth of an ounce of methamphetamine (R. 57: 6). There are 35 grams in an ounce of methamphetamine, and the average dose is a quarter of a gram (id.). A "throw" appears to be the equivalent of a single batch of finished product and amounts to six-to-eight ounces each (R. 57: 6-7). Hence, one throw could produce from 840 to 1120 individual doses of methamphetamine (id.). Each eight ball defendant received would be the equivalent of approximately 17.5 individual doses.

home revealed a clandestine methamphetamine laboratory in the basement, completed methamphetamine (including nearly fifteen grams in nine different baggies), and miscellaneous paraphernalia (RCA. 4; PSI 65; R. 57: 7). Defendant—one of three people who lived at the home—admitted that he was making methamphetamine just prior to the officers' arrival and that he had been selling the finished drug to various people who came to the home for that purpose (id.).

SUMMARY OF THE ARGUMENT

Defendant claims that the sentencing judge abused his discretion in sentencing him to prison in lieu of jail, probation, and drug treatment. He claims that the judge considered only the protection of society in pronouncing sentence and failed to consider a myriad of other factors which established defendant's desire for and ability to succeed at rehabilitation. However, the record establishes that, in addition to considering the issue of societal protection, the sentencing judge considered the entirety of the information before him relevant to sentencing and gave full credence to defendant's sincerity in his desire for rehabilitation and future self-improvement. The judge ultimately determined that the favorable sentencing factors were outweighed by the need to protect society in light of defendant's repeated and escalating involvement with the gravely serious business of methamphetamine production, sale, and use. That determination is not an abuse of discretion in this case.

ARGUMENT

POINT I

THE RECORD FULLY SUPPORTS THE TRIAL COURT'S EXERCISE OF DISCRETION IN SENTENCING DEFENDANT TO STATUTORILY-AUTHORIZED PRISON TERMS FOR HIS TWO CONVICTIONS FOR MANUFACTURING METHAMPHETAMINE

Defendant challenges the trial court's imposition of prison terms for each of the crimes to which he pled guilty. He argues that the trial court abused its discretion by relying solely on the seriousness of the crimes to support the prison sentences. Br. of Aplt. at 11-14. He claims that the trial court failed to consider significant evidence relating to his "favorable prospects for probation and rehabilitation." Id. at 12-16. However, the record reflects no abuse of discretion where the sentencing judge considered both societal interests and defendant's rehabilitation prospects.

A. The Trial Court's Ruling:

Following argument by the parties concerning an appropriate sentence, the trial judge presented his ruling and reasoning:

> When I read through this Presentence Report, I wrote down what – in the margin what I was thinking would be appropriate. And when I read the recommendations, I was quite surprised, as well. And, frankly, my thoughts were more in keeping with what I've heard the State recommend in this case.
>
> Mr. Tompkins, I have no doubt that you are sincere, that you believe in everything that you are telling me but this case is not about you, totally. And what is a concern to me and to our community, our whole state, is the number of clandestine laboratories, the number of meth labs, the number of productions of those, the sheer volume that take place [sic] in meth labs and the untold, unaccountable damage that they do in our community. So, while we are also

concerned (Inaudible), if not totally that and the damage and the harm that's been done through this lab (Inaudible) others.

So, after having reviewed the fact that we have operation of a lab in 2001 and another operation in September of 1999, Second and First Degree Felonies, respectively, I'm going to go with the recommendation, that conclusion that I first came with, as well as what the State's recommending.

If this were just you, it would be wonderful, but it is not.

So I'm going to sentence you to five years to life on the First Degree Felony and one to fifteen on the Second Degree Felony.

Those can be served concurrently, and you will start serving it today.

What that means is that at some point you'll be considered for parole. And there's nothing that will prevent you from getting your treatment and the help that you want and that you are seeking, the chance that you want. And I hope that you succeed, and I hope we don't see you back here. I wish that for you. I want you to succeed.

And if this – I have said before in this courtroom that I don't believe that there are victimless crimes, and there's certainly nobody arguing that in this case. And it couldn't be demonstrated if anybody tried. And so — at some point you are going to be released, and at some point you need to get back to your life. And I hope that you do. Your family hopes that you do. And you can say what you want about whether this was fair or whether it's right. I happen to think it is, balancing all aspects of this case as I understand them. And there'll come a day when you are back with your family, and I hope that's successful. I hope you (Inaudible).

(R. 57: 10-12) (attached in **Addendum B**).

B. The Standard of Appellate Review:

"This [C]ourt 'does not disturb a sentence unless it exceeds that prescribed by law or unless the trial court has abused its discretion.'" State v. Baker, 963 P.2d 801, 810 (Utah App.) (quoting State v. Russell, 791 P.2d 188, 192 (Utah 1990)) (additional citation

omitted), cert. denied, 982 P.2d 88 (Utah 1998). "Sentencing requires such discretion because it 'necessarily reflects the personal judgment of the court.'" State v. Woodland, 945 P.2d 665, 671 (Utah 1997) (citation omitted). "Thus, a sentence imposed by the trial court should be overturned only when it is inherently unfair or clearly excessive." Id.; State v. McCovey, 803 P.2d 1234, 1235 (Utah 1990) (finding abuse of discretion when court fails to consider all legally relevant factors or when sentence imposed is clearly excessive). An "appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court." State v. Gerrard, 584 P.2d 885, 887 (Utah 1978). See also State v. Pierson, 2000 UT App 274, ¶ 10, 12 P.3d 103, cert. denied, 20 P.3d 403 (Utah 2001); State v. Houk, 906 P.2d 907, 909 (Utah App. 1995).

Moreover, a "[d]efendant has no right to be placed on probation, that being within the discretion of the trial judge." State v. Smith, 842 P.2d 908, 909 (Utah 1992). Thus, where nothing in the record suggests "that the court considered any unreliable information in pronouncing sentence" or that "any other impropriety" occurred, the trial court does not abuse its discretion in sentencing defendant to "the sentence prescribed by statute." Id.

Finally, the State is not prohibited from incarcerating a defendant "'for purposes other than rehabilitation.'" State v. Nuttall, 861 P.2d 454, 458 (Utah App. 1993) (quoting State v. Bishop, 717 P.2d 261, 268 (Utah 1986)). Another appropriate purpose may be

"to protect society from an individual deemed to be a danger to the community." Nuttall, 861 P.2d at 458; see also Bishop, 717 P.2d at 265. Additional purposes include deterrence, punishment, restitution, and incapacitation. See State v. Rhodes, 818 P.2d 1048, 1051 (Utah App. 1991).

C. The Record Supports the Sentencing Judge's Imposition of the Statutorily-Prescribed Sentences

Defendant claims that the trial judge based its ruling solely on society's concern for stopping drugs, and that he gave no individual consideration whatsoever to the other factors he claims pertained to this particular defendant that and weigh in favor of probation and drug treatment: his minimal criminal history, his familial support, his sincere desire for rehabilitation, the "extremely low risk of re-offending" he presents, his acceptance into a drug treatment program, his good character and desire for reform, his willingness to accept therapy for his drug problem, his steady employment in the past, his educational and future employment desires, his expressed remorse, his new-found understanding of the seriousness of his actions, and the PSI recommendation of a year in jail followed by drug treatment. Br. of Aplt. at 12-16. In other words, defendant believes that under the circumstances at hand, the trial court would necessarily abuse its discretion by sentencing him to serve *any* prison time, even though the statute expressly provides for a lengthy prison sentence for these crimes. However, the record amply supports the trial court's sentencing decision.

Defendant recognizes only two aspects of the case that support the trial court's sentencing decision: the seriousness of the crimes and his "apparent retraction about selling and trading drugs." Id. at 13-14. He claims that these points do not mandate a prison sentence, and that other factors required rejection of the statutorily-permitted punishment. Id. at 14-15. His narrow view of the situation ignores a number of facts which support the sentencing decision, not the least of which is that the sentences imposed in this case were the proper statutory penalties prescribed for his offenses. See Utah Code Ann. § 76-3-203(2) (Supp. 2001). Defendant received no more punishment than that provided for by law. He also received the punishment which the State agreed to recommend pursuant to the plea bargain (RSC. 30).

Another fact obvious to the sentencing judge was defendant's status as a serial offender. He committed the same serious crime not once, but twice, both times in locations that subjected him to the statutory enhancement provisions, thereby making his conduct even more dangerous than necessary to an unsuspecting public (RSC. 4). His involvement with the first lab lasted for six months and apparently halted only because he got caught (R. 57: 6-7). That did not prevent him, however, from thereafter repeating his criminal conduct.

Moreover, even if one believes defendant, his involvement escalated from merely cleaning up after and profiting from the manufacturing enterprise to attempting to manufacture it himself and selling it from his home (RSC. 4; RCA. 4; R. 57: 6-7; PSI. 65-

66).[5] If one looks at all the evidence, however, part of the payment defendant received for permitting others to run the lab in his home the first time was more methamphetamine than a person would need for individual use (R. 57: 6-7). Even after being caught the first time, defendant went on to get further involved in the same kind of dangerous enterprise at a new location, resorting to stealing the necessary ingredients to manufacture the methamphetamine himself in a clandestine laboratory in his basement (RSC. 2-4; RCA. 2-5; PSI. 65-66).

The record shows that defendant continued with his criminal conduct despite numerous opportunities to stop. Neither his family nor his three prior stints in jail for minor traffic violations and marijuana possession had any impact on his habit or his criminal activity. His first arrest did not deter his later involvement in a second clandestine laboratory. Instead, despite being faced with several drug charges which could have garnered him several years in prison upon conviction, he got himself even more involved in a second laboratory without even waiting for the criminal proceedings on the first laboratory to be completed. Finally, he made no attempt to get help for his drug problem until he was put in jail for a prolonged period of time following discovery of the second laboratory, with the outcome of both criminal proceedings still uncertain (RCA. 24; R. 57: 4-5; PSI. 70, 72).

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[5]Defendant admitted to the arresting officer that he sold the drugs out of his home (RCA. 4; PSI. 65). By the time the PSI was complete, defendant retracted that statement and claimed he never sold any of it (PSI. 66).

All this information was before the sentencing judge as he considered his sentencing options. In addition, the prosecutor emphasized the amazing quantity of drugs involved in the first lab alone: not only the conservative estimate of 840 hits of methamphetamine in any given "throw" produced at the lab over the six months of defendant's involvement, but the seventeen individual doses paid to defendant for each "throw" throughout the six months. By the time he was caught in the act of making drugs at the second lab, defendant had resorted to stealing ingredients to make his own methamphetamine, purportedly for his own use. However, at 840 hits per "throw," the sentencing judge could reasonably have rejected defendant's claim that he was making it only for himself.

On this record, it is clear that the sentencing decision encompassed more than simply consideration of societal interests, although societal protection weighed heavily in the judge's decision. The sentencing judge explained that he had considered and balanced "all aspects of this case" and had thoroughly read the presentence report, making notes in the margin as he went (R. 57: 10-12). He also explained that he had "no doubt" about defendant's sincerity in his expressed desire for rehabilitation and betterment of himself in the future (R. 57: 10). The judge noted, "If this were just you, it would be wonderful, but it is not" (R. 57: 11). This was a tacit acknowledgment of the favorable information on which defendant's brief focuses, together with the judge's belief that the information would have carried more weight in defendant's favor if he had not

chosen to embark on a repeated criminal enterprise which necessarily involved the lives of many other individuals. Hence, the judge noted and recognized the sentencing factors favoring defendant, but found them to be less weighty than other factors in determining the appropriate sentence for this defendant in light of the crimes to which he pled guilty. The judge felt that defendant's repeated involvement in clandestine methamphetamine laboratories over a relatively short period made him a dangerous person from whom society should be protected and that societal protection outweighed individual rehabilitation in this case. See Nuttall, 861 P.2d at 458 (defendants may be incarcerated for purposes other than rehabilitation, including "to protect society from an individual deemed to be a danger to the community"). Under the facts before him, the sentencing judge was justified in determining that probation would not be in the public interest given the escalation in defendant's involvement in methamphetamine production, sale, and use. See Rhodes, 818 P.2d at 1051 (a sentencing judge must consider whether probation "will best serve the ends of justice and is compatible with the public interest.").

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the defendant's convictions and sentences.

NO ORAL ARGUMENT OR PUBLISHED OPINION REQUESTED

This case does not present a novel or important issue. Consequently, the State does not ask that the matter be set for oral argument or that a published opinion issue.

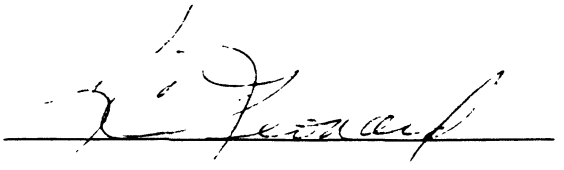
RESPECTFULLY SUBMITTED this 7th day of May, 2002.

MARK L. SHURTLEFF
Attorney General

KRIS C. LEONARD
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed by first class mail, postage prepaid, to Kent R. Hart and David P. S. Mack, Salt Lake Legal Defender Assoc., attorneys for appellant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 14th day of May, 2002.



ADDENDA

ADDENDUM A

UTAH CODE ANNOTATED

1953

VOLUME 6A

1998 REPLACEMENT

Titles 58 and 58A

58-37d-4. Prohibited acts — Second degree felony.

(1) It is unlawful for any person to knowingly or intentionally:

(a) possess a controlled substance precursor with the intent to engage in a clandestine laboratory operation;

(b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;

(c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or laboratory supplies knowing or having reasonable cause to believe it will be used for a clandestine laboratory operation;

(d) evade recordkeeping provisions of Title 58, Chapter 37c, Controlled Substances Precursor Act, or the regulations issued under that act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;

(e) conspire with or aid another to engage in a clandestine laboratory operation;

(f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act; or

(g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by any other person regardless of whether the final destination for the distribution is within this state or any other location.

(2) A person who violates any provision of Subsection (1) is guilty of a second degree felony.

History: C. 1953, 58-37d-4, enacted by L. 1992, ch. 156, § 4; 1997, ch. 64, § 11.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, added Subsections (1)(f) and (g) and made stylistic changes accordingly

Cross-References. — Sentencing for felonies, §§ 76-3-201, 76-3-203, 76-3-301.

58-37d-5. Prohibited acts — First degree felony.

(1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), or (f) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:

(a) possession of a firearm;

(b) use of a booby trap;

(c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

(d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;

(e) any phase of the clandestine laboratory operation or production or manufacture of a controlled or counterfeit substance involved a person less than 18 years of age;

(f) clandestine laboratory operation actually produced any amount of a specified controlled substance; or

(g) intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.

(2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through (g) of this section occurred in conjunction with the violation, at sentencing for the first degree felony:

(a) probation shall not be granted;

(b) the execution or imposition of sentence shall not be suspended; and

(c) the court shall not enter a judgment for a lower category of offense.

History: C. 1953, 58-37d-5, enacted by L. 1992, ch. 156, § 5; 1997, ch. 64, § 12.

ADDENDUM B

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * * * *

THE STATE OF UTAH,	)	ORIGINAL
Plaintiff,	)	
VS.	)	CASE NO. 011903328
JEFFREY RAY TOMPKINS,	)	
Defendant.	)	

* * * * *

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(CARLTON WAY, RPR)

BEFORE THE HONORABLE PAUL G. MAUGHN

SALT LAKE CITY, UTAH

SEPTEMBER 24, 2001

Carlton Way, Registered Professional Reporter

is going to change Mr. Tompkins, not just his freedom, but change -- change the things about him that got him involved in this in the first place. And that's attacking the addiction that he has.

And, as he's indicated to you, he's taken steps in those programs. And, as the report confirms and as we know, there -- he is accepted at Odyssey House. We understand that there is additional time recommended. But this is not a person that needs to go to prison simply to protect the rest of us from him. He knows he was involved in something extremely bad and extremely dangerous and extremely harmful. But he's -- he's -- he's changed from that, and he will change, and he will complete this program if you give him that opportunity, I'm certain, Judge.

THE COURT: Thank you.

When I read through this Presentence Report, I wrote down what -- in the margin what I was thinking would be appropriate. And when I read the recommendations, I was quite surprised, as well. And, frankly, my thoughts were more in keeping with what I've heard the State recommend in this case.

Mr. Tompkins, I have no doubt that you are sincere, that you believe in everything that you are telling me but this case is not about you, totally. And what is a concern to me and to our community, our whole state, is the number of clandestine laboratories, the number of meth labs, the number

of productions of those, the sheer volume that take place in meth labs and the untold, unaccountable damage that they do in our community. So, while we are also concerned (Inaudible), if not totally that and the damage and the harm that's been done through this lab (Inaudible) others.

So, after having reviewed the fact that we have operation of a lab in 2001 and another operation in September of 1999, Second and First Degree Felonies, respectively, I'm going to go with the recommendation, that conclusion that I first came with, as well as what the State's recommending.

If this were just you, it would be wonderful, but it is not.

So I'm going to sentence you to five years to life on the First Degree Felony and one to fifteen on the Second Degree Felony.

Those can be served concurrently, and you will start serving it today.

What that means is that at some point you'll be considered for parole. And there's nothing that will prevent you from getting your treatment and the help that you want and that you are seeking, the chance that you want. And I hope that you succeed, and I hope we don't see you back here. I wish that for you. I want you to succeed.

And if this -- I have said before in this courtroom that I don't believe that there are victimless crimes, and

there's certainly nobody arguing that in this case. And it couldn't be demonstrated if anybody tried. And so -- at some point you are going to be released, and at some point you need to get back to your life. And I hope that you do. Your family hopes that you do. And you can say what you want about whether this was fair or whether it's right. I happen to think it is, balancing all aspects of this case as I understand them. And there'll come a day when you are back with your family, and I hope that's successful. I hope you (Inaudible)

MR. MACK: Judge, that's credit for time served of 240 days, additionally?

THE COURT: That's fine with me. I will take that into account.

MR. MACK: (Inaudible).

(Hearing adjourned.)